Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
Implementation of the Telecommunications Act of 1996:	CC Docket No. 96-150
Accounting Safeguards Under the Telecommunications Act of 1996	

OPPOSITION TO PETITIONS FOR RECONSIDERATION OF AT&T CORP.

Pursuant to Section 1.429 of the Commission Rules, AT&T Corp. ("AT&T") submits this opposition to the petitions for reconsideration of the Commission's Accounting Safeguards Order, FCC 96-490, released December 24, 1996 ("*Order*"), in this proceeding.[1]

The petitions for reconsideration should be denied because, until meaningful local exchange competition exerts market pressure on them, the Bell Operating Companies ("BOCs") and other incumbent local exchange carriers ("ILECs") retain monopoly power and the ability to leverage that power into competitive markets through cost

[1] See Public Notice, Report No. 2178 released March 6, 1997, and published in the Federal Register on March 11, 1997. A list of the parties filing petitions for reconsideration is contained in Appendix A.

misallocation and discrimination. While accounting rules cannot themselves prevent the ILECs from misusing that market power, the accounting rules can provide some marginal protection against cross-subsidization. The ILECs seek to erode even that minimal safeguard.

First, the Commission should *not* adopt SBC's position (at 6-9) that those incidental interLATA services which are common carrier services should be treated as regulated for federal accounting purposes. This would exempt such services, including commercial mobile radio services ("CMRS"), from the cost allocation rules altogether. Instead, those costs would flow through the jurisdictional separations process and would be subject only to the interexchange price cap basket.

As the Commission explained, "Classifying such services as nonregulated activities allows the allocation of costs for these activities to occur immediately after such costs are assigned to Part 32 accounts. Such treatment avoids the necessary imprecisions inherent in the Part 36 jurisdictional separations process, the Part 69 access charge process and our Part 61 price cap rules. Moreover, . . . treating such services like nonregulated activities for federal accounting purposes will lessen the chance that costs associated with such services are inadvertently assigned to a local exchange or exchange access category." *Order* ¶ 76. Additionally, as Cox demonstrates (at 3-8),

incidental services including CMRS and video dialtone are fertile areas for cross-subsidization, thus making greater accuracy in accounting safeguards essential. Moreover, the Commission has previously required AT&T to treat its wireless services as nonregulated for federal accounting purposes.[2] SBC's assertion (at 7) that such treatment would be "inherently inconsistent" with existing rules is therefore erroneous.

The Commission should likewise reject SBC's further contention (at 10-14) that the Commission should not require an exogenous adjustment when network investment costs are reallocated from regulated to nonregulated. To the contrary, in these circumstances an exogenous adjustment should be made at the higher of undepreciated baseline cost plus interest at the authorized rate of return or fair market value. Exogenous treatment is needed to reflect the fact that ratepayers should not have borne the costs of these networks that were upgraded for purposes of anticipated BOC entry into the interLATA market. And, as the Commission explained, "Under the current regulatory scheme, only exogenous treatment can ensure that the

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[2] Applications of Craig O. McCaw and American Telephone and Telegraph Company for Consent to the Transfer of Control of McCaw Cellular Communications, Inc. and its Subsidiaries, 9 FCC Rcd. 5836 (¶ 116) (1994), aff'd sub nom. SBC Communications, Inc. v. FCC, 56 F.3d 1484 (D.C. Cir. 1995), aff'd on recon., 10 FCC Rcd. 11786 (1995).

benefits of competition are in fact shared with regulated ratepayers. . . . Exogenous adjustments to the price cap indices will only be eliminated when competition in the local service market eliminates the need for cost allocation rules altogether." *Order* ¶ 265. The Commission should not retreat from these pronouncements.

The Commission should also reject the contentions of Ameritech (at 2-4), CBT (at 3), GTE (at 6-7), and SNET (at 2-4) that carriers should be allowed to use fully distributed cost valuation for services provided by the carrier to affiliates. As the Commission explained, "The rule we adopt . . . requiring carriers to record all affiliate transactions that are neither tariffed nor subject to prevailing company prices at the higher of cost and estimated fair market value when the carrier is the seller or transferor, and the lower of cost and estimated fair market value when the carrier is the buyer or transferee -- appears more likely to ensure that the transactions between carriers and their nonregulated affiliates take place on an "arm's length" basis, guarding against cross-subsidization of competitive services by subscribers to regulated telecommunications services." *Order* ¶ 147.

The Commission appropriately carved out a limited exception to this rule to permit a carrier to value services at fully distributed cost when it <u>purchases</u> from its affiliate services that are neither tariffed nor subject to prevailing company prices and such affiliate exists <u>solely</u>

to provide services to members of the carrier's corporate family. This would enable ratepayers to realize "the benefits of . . . economies of scale and scope reflected in such affiliate's costs," whereas "requiring carriers to perform fair market valuations for such transactions would increase the cost to ratepayers while providing limited benefit." *Order* ¶ 148. By contrast, allowing carriers to avoid the higher of cost or fair market value test when selling services to an affiliate would allow the affiliate to obtain services at less than fair market value, thereby skewing competition for the services (including long distance and information services) provided by the affiliate and forcing the ILECs' regulated ratepayers to improperly bear such costs.

On the other hand, AT&T supports MCI's petition (at 2-5) which requests the Commission to reconsider its decision to exempt transfers of assets and services from the BOC to its long distance affiliate from the 50 percent of external sales threshold otherwise required to use prevailing company price valuation. *Order* ¶ 137. The Commission found that the 50 percent threshold is unnecessary because Section 272 requires BOCs to charge their Section 272 affiliates the same rates as unaffiliated third parties for facilities, services, and information.

As MCI points out (at 2), "The Commission has consistently emphasized that the prevailing price method of valuation should only be used when the transfer price is a

reliable measure of market value." There is, however, nothing in the record to support a conclusion that the prices for products and services transferred from the BOC to its Section 272 affiliates will represent true market value. AT&T agrees that BOC affiliates will be the only customers for many BOC services regardless of price. This will most likely be the case with shared services and, thus, the BOC will have an incentive to sell to its affiliate at less than fair market value. These same considerations apply to transferring the BOCs' official usage networks to their long distance affiliates. These items represent enormous costs which the BOCs' ratepayers should not have to underwrite. Accordingly, the Commission should require that a BOC not use the prevailing price standard for transfers to its Section 272 affiliate unless the 50 percent external sales threshold is met.

WHEREFORE, the Commission should deny the ILECs' petitions for reconsideration and grant MCI's petition, so as to effectuate properly the accounting safeguards required under the 1996 Telecommunications Act.

Respectfully submitted,

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March 26, 1997

APPENDIX A

LIST OF PETITIONERS
CC Docket 96-150

American Public Communications Council ("APCC")

Ameritech

Cincinnati Bell Telephone Company ("CBT")

Cox Communications, Inc. ("Cox")

GTE Service Corporation and its affiliated domestic telephone operating, long distance and wireless companies ("GTE")

MCI Telecommunications Corporation ("MCI")

SBC Communications, Inc. ("SBC")

Southern New England Telephone Company ("SNET")

CERTIFICATE OF SERVICE

I, May Morrison, do hereby certify that a true copy of the foregoing Opposition to Petitions for Reconsideration of AT&T Corp. was served this 26th day of March, 1997, by United States mail, first class, postage prepaid, upon the parties listed on the attached Service List.

May Morrison

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